

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE P.VISHWANATHA SHETTY

Writ Petition No. 16513 of 1997

1. Sri Shrirang
Aged about 53 years
2. Sri Hanamant
Aged about 47 years
3. Sri Gururaj
Aged about 44 years
(All the above are
Sons of Sri Krishnaji Nagathan
Residing at No.1719/3
Kelkarbag
Belgaum Taluk
Belgaum District) 408
.. PETITIONERS

- Vs -

1. The Deputy Commissioner
Belgaum District
Belgaum
2. The Tahasildar
Belgaum Taluk
Belgaum
3. The Revenue Inspector
Kakati
Belgaum District
4. Smt. Shantabai
W/o Channappa Sunagar
Major, Residing at
Honaga Village
Belgaum Taluk
Belgaum District
5. Smt. Sushila
W/o Basavant Patil
Major, Kamewadi Village
Kowed Post
Chandagad Taluk
Kolhapur District

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6. Miss Laxmi
D/o Channappa Sunagar
Major, Residing at
Honaga Village
Belgaum Taluk
Belgaum District

7. Shivaraj
S/o Channappa Sunagar
Major, Residing at
Honaga Village
Belgaum Taluk
Belgaum District

8. Maruthi
S/o Channappa Sunagar
Major, Residing at
Honaga Village
Belgaum Taluk
Belgaum District

.. RESPONDENTS

(By Sri S.R.Shinde, Advocate for R-4 to R-8
and Sri B.E.Kotian, Addl. Government Advocate
for R-1 to R-3)

This writ petition is filed under
Articles 226 and 227 of the Constitution of
India praying to quash vide Annexure-F dated
29th June 1996 and etc.

This petition coming on for orders
this day, the Court made the following:

ORDER

Though this petition is listed in the
orders' list, with the consent of the learned
counsel appearing for the parties, this
petition is taken up for final hearing and
disposed of by this order.

2. The petitioners in this petition *who*
claim to have purchased 3 acres and 30 guntas
of land in Sy.No.429 of Honaga Village,
here

Belgaum Taluk, Belgaum District, have called in question the correctness of the Order dated 29th June 1996 a copy of which has been produced as Annexure-F passed by the 1st respondent and also the Order dated 25th November 1996, a copy of which has been produced as Annexure-G passed by the 2nd respondent.

3. Sri Ganesh, learned counsel appearing for the petitioners submitted that pursuant to the purchase of the lands in question by the petitioners, the name of the petitioners came to be entered in the record of rights and under these circumstances it was not open to the respondents-1 and 2 to have passed the impugned orders without hearing the petitioners and without giving an opportunity to the petitioners. Therefore, he submits that the impugned orders are liable to be quashed on the ground that the said orders came to be passed in disregard to principles of natural justice.

4. However, Sri Shinde, learned counsel appearing for respondents-4 to 6 submits that the land in question and other

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land and house property originally belonged to one Channappa Sunagar who is the husband of the 4th respondent and father of respondents-5 to 8 and in the said properties the respondents-4 to 8 have a share and under these circumstances it was not permissible for the respondents-7 and 8 to have sold the land which is the subject matter of dispute in this petition in favour of the petitioners. He further submitted ^{that} the name of the petitioners came to be entered in the record of rights without notice to respondents-4 to 6 and under these circumstances the petitioners cannot have any grievance with regard to the orders impugned. He also submitted that since the suit O.S.No. 185 of 1996 filed by respondents-4 to 6 for partition and separate possession and suit O.S.No.205 of 1997 filed by respondents-7 and 8 challenging the validity of the sale deed executed by them is pending adjudication before the civil court, this is not a fit case for interference by this Court in exercise of its jurisdiction either under Article 226 or 227 of the Constitution of India.

W.W.

4. Having regard to the facts and circumstances of the case, I am of the view that this is not a fit case for interference against the order impugned in exercise of my jurisdiction either under Article 226 or 227 of the Constitution of India. If the petitioners are aggrieved by the orders impugned, the petitioners are provided with a remedy under Proviso given to Section 135 of the Karnataka Land Revenue Act to approach the civil court seeking appropriate relief. Further, admittedly suit O.S.No.185 of 1996 filed for partition and separate possession and also suit O.S.No.205 of 1997 filed for seeking declaration of the sale deed as invalid is pending consideration before the civil court. Therefore, ultimately the rights of the parties are required to be finally settled by virtue of the decree that may be passed by the civil court. Therefore, I am of the opinion it would not be in the interest of justice and the interest of all the parties to quash the impugned order for fresh consideration by the authorities even if it is held that the petitioners were not heard while passing the impugned order. However, it is necessary to observe that the civil court will

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consider the respective claim of the parties only on the basis of the evidence that may be adduced before the court by the parties and without being influenced by the entries made in the record of rights . Subject to the observation made above, this petition is dismissed.

5. Sri B.E.Kotian, learned Government Advocate is given four weeks' time to file his memo of appearance. —

Sd/-
JUDGE



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